IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.621 OF 2006
IN
CRIMINAL APPEAL NO.572 OF 2006

Rohit Ganpat Patil and others ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr.Rahul Arote h/f Mr.S.R.Pasbole for the Applicants
Mr.S.V.More, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 18,2006.

P.C.:

1. Heard Advocate appearing for the Applicants and the learned A.P.P. for State. The Applicants have been convicted for the offence under section 304 (Part I) of the Indian Penal Code and have been sentenced to suffer R.I. for ten years. Applicant No.3 has been convicted for the offence punishable under section 404 of the said Code. The Applicants were not granted bail during the pendency of the trial. This is a case where the only eye witness (P.W.No.3) and all Panch Witnesses turned hostile. The conviction is based only on evidence of recovery, evidence of arrest and the Chemical Analyser's report. The learned Judge has come to the conclusion that though P.W.No.3 was declared hostile, the first information report filed by the said witness has been duly proved. The learned Judge has also observed that though the F.I.R. is duly proved it is not a substantive evidence.

2. P.W.No.3 who lodged the F.I.R. was the only alleged eye witness who has turned hostile. Even the Panch Witnesses who were examined to prove the recovery under section 27 of the Indian Evidence Act, 1872 were declared hostile. P.W.No.9

Gopal was examined to prove recovery of the jewellery on the person of the deceased at the instance of the accused No.3. His evidence is that the accused No.3 led the Police Party to one person by the name Shekhar. The said Shekhar claimed that he has handed over the jewellery to one of his friend whose name was not disclosed. According to the said witness, the said Shekhar went away for 10 to 15 minutes and thereafter, he produced the jewellery. The recovery panchnama as regards recovery of clothes and iron rod at the instance of the accused No.1 has been marked 'X' for identification and it is not exhibited. The report of the C.A. discloses that the blood group of the Appellant Nos.2 and 4 as well as of the deceased was of 'B' group.

3. The learned Trial Judge has based his conviction on the basis of the F.I.R. lodged by the alleged eye witness and on the basis of alleged recovery. The Apex Court in case of Rambilas and othes Vs. State of M.P. (1997 S.C.C. (Cri.) page 1222) has held that the mere recovery of certain incriminating articles at the instance of the accused cannot form the basis of conviction.

4. The Applicants were arrested in June 2003 and none of them was granted bail. Thus, they have completed three years and four months in jail. Considering the aforesaid factual aspects, the Applicants are entitled to be enlarged on bail. Considering the material on record, stringent conditions will have to be imposed. Hence, I pass the following order :

i) The Applicants shall be enlarged on the bail in the sum of Rs.25,000/- (Rupees twenty five thousand) each with one or two local sureties in the like amount.

ii) Bail is granted subject to the condition that the Applicants will not enter the area of Mumbai, Mumbai Suburban and Thane Districts.

iii) The order granting bail will be given effect only after the Applicants furnish to the concerned Police Station the detailed address of the place of residence where they propose to stay after grant of bail.

iv) Bail is granted subject to the condition that the Applicants will mark attendance at the concerned local Police Station having jurisdiction over the area in which the Applicants will be residing on every first and third Saturday of every calender month till the final disposal of the Appeal.

v) Order granting bail will be given effect to only after the Applicants surrender their passports, if any, to the Investigating Officer. If the Applicants are not holding any passports, they will file an Affidavit to that effect in this Court.

JUDGE